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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**INVENTOR:** Patrick Thomas O'Connor et al.  
**CASE:** P668D1  
**SERIAL NO.:** 09/814,010 **GROUP ART UNIT:** 3628  
**FILED:** 03/20/2001 **EXAMINER:** Nguyen, Nga B.  
**SUBJECT:** An Internet Subscription System for Providing Appointment  
Management for Small Businesses

**PARTY IN INTEREST:** All inventions in the disclosure in the present case are  
assigned to or assignable to:

Not assigned. Fifty percent interest each joint inventor, Patrick T. O'Conner, of 7204  
Langley Canyon Road, Prunedale, CA 93907 and Donald R. Boys of 2720 Tierra Way,  
Aromas, CA 95004.

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Dear Sirs:

## **APPEAL BRIEF**

09/16/2005 EFLORES 00000025 09814010

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## **1.0 Real Party in Interest**

The real parties in interest are the parties named above in the caption of the brief, fifty percent each joint inventors Patrick T. O'Conner, of 7204 Langley Canyon Road, Prunedale, CA 93907, and Donald R. Boys of 2720 Tierra Way, Aromas, CA 95004.

## **2.0 Related Appeals and Interferences**

This is an appeal from the Office Action of the Primary Examiner dated 07/05/2005 Finally rejecting claims 35-36, the only pending claims in the application. There are no related appeals of the claims in this case or interferences in the instant case.

## **3.0 Status of the Claims**

Following is the status of all claims in the instant case:

Claims 1-34 Canceled

35. Rejected - appealed in this brief.

36. Rejected - appealed in this brief.

## **4.0 Status of Amendments**

No amendments have been filed subsequent to the Final rejection of claims 35 and 36, the subjects of this appeal.

## **5.0 Summary of the Claimed Subject Matter**

Following is a concise explanation of the subject matter defined in each of the two standing independent claims 35 and 36. There are no dependent claims.

### 5.1 Independent system claim 35

35. An Internet-enabled appointment and reservation service system [Fig. 1, elements 12, 13 - first described page 4, line 27] comprising:

an Internet-connected appointment/reservation server [Fig. 1, element 13, first described page 4, line 27] executing first software [Fig. 1, element 12, first described page 4, line 29]; and

one or more subscribing businesses [Fig. 1, element 20, first described page 5, line 7] to the service, the businesses each having an internet-connected appliance [Fig. 1, element 19, first described page 5, line 7] executing second software [Fig. 1, element 33, first described page 12, line 3];

wherein the appointment server [13], through the first software [12], presents to browsing clients [Fig. 1, element 21, first described page 5, line 26] an interactive interface [Fig. 3, entirety] enabling the clients [21] to select individual ones of the subscribing businesses [20], and once a subscribing business is selected displays to the selecting client an interactive appointment/reservation schedule [Fig. 2, entirety] to select an appointment or reservation with the business [20], wherein the appointment server [13] updates the appointment/reservation schedule [Fig. 2] at the server for each business as browsing clients make appointments/reservations, wherein the appointment/reservation server [20] periodically provides updated appointment schedules [Fig. 2] to the subscribing businesses [20] which are displayed by the second software [33] interactively, allowing the subscribing businesses [20] to further update the appointment reservation schedules [Fig. 2] and to return them to the appointment/reservation server [13], which updated versions then becomes the interactive schedules displayed to browsing clients [21].

*In summary, in claim 35, an internet-connected server system provides appointment services for a plurality of businesses whose inventory is time-based*

*appointments to provide a service, such as a haircut, for example. The system is connected to the businesses, who connect typically through computer terminals, and to clients who establish an Internet link with a page on the server. The server provides an interactive interface for the browsing client to select a business, and then an appointment schedule where the client may select an appointment. The server system provides updated schedules to the individual businesses periodically, which are enabled through the second software to make further changes to such schedules, and to provide updated copies back to the server system.*

## **5.2 Independent method claim 36**

36. A method for managing appointment/reservations for subscribing businesses [Fig. 1, element 20, first described page 5, line 7] to an Internet-connected appointment/reservation server [Fig. 1, element 13, first described page 4, line 27], comprising the steps of:

(a) presenting to browsing clients [Fig. 1, element 21, first described page 5, line 26] by the appointment/reservation server [13] an interactive interface [Fig. 3] enabling the clients [21] to select individual ones of the subscribing businesses [20];

(b) once a subscribing business is selected in (a) displaying to the selecting client [21] an interactive appointment/reservation schedule [Fig. 2] enabling the client to select an appointment or reservation with the business [20];

(c) updating the appointment/reservation schedule at the server [13] for each business [20] as browsing clients [21] make appointments/reservations;

(d) periodically providing updated appointment schedules [Fig. 2] to the subscribing businesses [20] and displaying the schedules by the second software [33] interactively, allowing the subscribing businesses to further update the appointment reservation schedules and to return them to the

appointment/reservation server, which updated versions then becomes the interactive schedules displayed to browsing clients.

*In summary, the method uses an Internet-connected serve with first software, that operate together as a system to manage appointment schedules for businesses who subscribe to the service. The Businesses provide schedules to the system, which are, in essence, inventory, as the schedules reflect saleable time slots which may be reserved by clients. The system displays the schedules to browsing clients who select the business in an interactive window provided by the system. The client is enabled to select a time slot (ie. an item of inventory). The system periodically provides the updated schedules to the subscribing businesses, which are enabled to amend the schedules further (ie. a business may have filled a time slot by another means outside the claimed system) and to send the further updated schedules back to the system, which then uses the new schedules to display inventory for the business to clients.*

## **6. Grounds of Rejection to be Reviewed on Appeal**

Claims 35 and 36 stand finally rejected under 35 U.S.C. 103(a) as being unpatentable over DeLorme et al. (DeLorme hereinafter) U.S. Patent No. 5,948,040 in view of Cummings Jr. et al. (Cummings hereinafter) U.S. Ptent No. 6,345,260.

## **7. Argument**

Because there is but one ground of rejection, as indicated above, there are no separate subheadings under "Argument".

Appellant believes that the Examiner in this case has neglected to adequately consider the claimed cooperative manner in which the appointment/reservation system, business client station and selecting users operate, and has therefore failed to make a prima facie case for obviousness in the standing rejection.

The Examiner's Arguments:

The Examiner has admitted in his remarks that the reference of DeLorme does not teach (A) that the appointment server (in DeLorme) updates the appointment/reservation schedule at the server for each business as browsing clients make appointments or reservations, or (B) that the appointment/reservation server periodically provides updated appointment schedules to the subscribing businesses which are displayed by the second software interactively, allowing the subscribing businesses to further update the appointment reservation schedules and return them to the appointment/reservation server, which updated versions then become the interactive schedules displayed to browsing clients. [See Final action, part 5, page 5, about midway on the page]. The Examiner further states that, however, DeLorme discloses that the users can add or alter appointments, and further, that the reference of Cummings discloses the periodic update of appointments, and thus, it would have been obvious to one of ordinary skill in the art to modify the system of DeLorme by adopting the teaching of Cummings to better serve the customers while maximizing the profit by utilizing every available income source i.e. available tickets for performances, flights or cultural events or tables for restaurants.

The patentable heart of appellant's claims is the cooperative manner in which the appointment/reservation server, client station and browsing client operate together. In the system as claimed the appointment/reservation schedules are stored and updated at the appointment/reservation server via the first software executing at the appointment/reservation server. As a browsing client selects appointments, for example, the schedule is updated at the appointment/reservation server, and the updated schedule is presented graphically and interactively to the appropriate subscribing business by the appointment/reservation server. The subscribing business is enabled to view the updated schedule, and make any changes required, such as new appointments made available or existing appointments/reservations that are no longer available due to for whatever

reason. The schedule is maintained and updated at the appointment/reservation server, and is periodically updated by the browsing clients selecting appointments, etc. and the updated schedule is periodically made available to the subscribing business client for any changes or updates to the schedule required by the selecting business client, at which time updated schedules are sent back to the appointment/reservation server for display to the browsing client for selection of appointments or reservations. Both the subscribing business and a browsing/selecting client may view updated schedules at any given time, by the periodic presentation of the updated schedules to the subscribing business client by the first software executing at the appointment/reservation server.

In contrast, the combined references teach that a browsing client may make an appointment or reservation, which is then sent to the business for acceptance or rejection by returning a code. However, it is clear that the TRIPS server of DeLorme does not store schedules at the server, the schedules being updated at the server by the selecting client as well as the subscribing business client, and sharing the updated schedules periodically with the businesses. The Examiner conveniently avoids the difference by using a method employed by many Examiners of quoting the appellant's claim language in the action and attributing the language to the reference.

Further, DeLorme fails to teach that the browsing client, while selecting reservations or appointments, for example, may view the current schedules, and any updates made to the schedules by the subscribing business clients, as the browsing client is selecting appointments or reservations via interactive interface provided by the appointment/reservations server. This is because the schedules are not maintained and updated at the server in DeLorme; rather, the schedules are maintained and updated at the subscribing businesses. DeLorme does indeed disclose that browsing/selecting users can add or alter appointments, and Cummings does teach that periodic updates of appointments may be made, but the schedules are maintained and updated at the subscribing businesses, as the browsing user makes selections, and the interaction involved in updating said schedules is between the browsing client and the subscribing business client, not between the browsing client and the appointment/reservation server,

as in the invention of the present application.

Appellant urges that maintaining and storing the updated appointment/reservation schedules at the appointment/reservation server is a new and patentably distinct feature over the cited prior art, which allows the server system of the invention to serve as a real broker of service inventory to the browsing clients. The system of DeLorme manages data and allows a user to enter and change lists of appointments, etc., but the invention, as admitted by the Examiner, does not teach that the appointment/reservation server updates the schedules at the server for each business as browsing clients make appointments/reservations, and that the server periodically provides updated schedules to the subscribing business clients which are displayed by the second software of the business clients interactively, allowing the subscribing businesses to further update the appointment reservation schedules and to return them to the server, the updated schedules then becoming the interactive schedules displayed to the browsing clients. In DeLorme, information is presented to the browsing client from participating business clients, but the browsing clients clearly does not connect to the participating business providers in a manner to allow the browsing client to make or change an appointment or reservation, and update the subscribing businesses schedules as to the allocation of the service inventory for sale. The browsing user in DeLorme may call or interact with the participating businesses electronically via a user interface, to make appointments or reservations, etc., but DeLorme clearly fails to teach a service to the subscribing businesses of brokering the business inventory. DeLorme simply does not teach this capability at all. DeLorme merely provides a different but related service for a different purpose than that of appellant's invention.

The reference of Cummings teaches the ability for the user to update appointments, etc., but it is clear that neither reference teaches keeping and updating schedules and sharing them periodically with the business clients as well as browsing clients, the ability of the browsing clients to a view updated and current schedules while selecting appointments or schedules, and the ability of the appointment/reservation server to serve as a real broker of service inventory to the browsing clients, by maintaining the



updated schedules at the appointment/reservation server and sharing them periodically with the subscribing business clients.

So the appellant asserts that a proper rejection, under 35 U.S.C. 103, is not supported by the combination of DeLorme and Cummings, because claimed limitations, which enable a much more robust and useful system than that of the combination of the references, are not taught in either reference.

Appellant also objects to the obviousness argument used by the Examiner, and again this is a common tactic by Examiners, that an addition to what the references teach is warranted in a rejection because it would make a better invention. Such motivation is reasonable to support the combination of features actually taught in the references, but not to add features not taught in the references. So the fact that making the combination of DeLorme and Cummings more interactive would be a good thing is not a proper argument for obviousness.

Appellant therefore strongly believes that the new claims 35 and 36 are clearly and unarguably patentable over the combined art. Accordingly, appellant respectfully requests that the Board reverse the Final rejection of claims 35 and 36 and hold the claims allowable.

## **8. Claims Appendix**

The claims involved in the appeal are:

35. An Internet-enabled appointment and reservation service system, comprising:
- an Internet-connected appointment/reservation server executing first software;
  - and
  - one or more subscribing businesses to the service, the businesses each having an internet-connected appliance executing second software;
- wherein the appointment server, through the first software, presents to browsing clients an interactive interface enabling the clients to select individual ones of the subscribing businesses, and once a subscribing business is selected displays to the selecting client an interactive appointment/reservation schedule to select an appointment or reservation with the business, wherein the appointment server updates the appointment/reservation schedule at the server for each business as browsing clients make appointments/reservations, wherein the appointment/reservation server periodically provides updated appointment schedules to the subscribing businesses which are displayed by the second software interactively, allowing the subscribing businesses to further update the appointment reservation schedules and to return them to the appointment/reservation server, which updated versions then becomes the interactive schedules displayed to browsing clients.
36. A method for managing appointment/reservations for subscribing businesses to an Internet-connected appointment/reservation server, comprising the steps of:
- (a) presenting to browsing clients by the appointment/reservation server an interactive interface enabling the clients to select individual ones of the subscribing businesses;
  - (b) once a subscribing business is selected in (a) displaying to the selecting client an interactive appointment/reservation schedule enabling the client to select an

appointment or reservation with the business;

(c) updating the appointment/reservation schedule at the server for each business as browsing clients make appointments/reservations;

(d) periodically providing updated appointment schedules to the subscribing businesses and displaying the schedules by the second software interactively, allowing the subscribing businesses to further update the appointment reservation schedules and to return them to the appointment/reservation server, which updated versions then becomes the interactive schedules displayed to browsing clients.

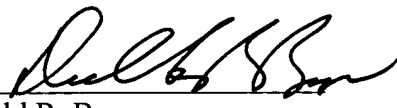
**9. Evidence Appendix**

No evidence other than the arguments and facts presented in this brief is provided.

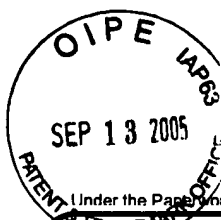
**10. Related Proceedings Appendix**

No copies provided, because these claims have never been appealed.

Respectfully Submitted,  
Patrick Thomas O'Connor et al.

by   
Donald R. Boys  
Reg. No. 35,074

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PTO/SB/17 (12-04)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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# FEE TRANSMITTAL

## For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

**Complete if Known**

Application Number	09/814,010
Filing Date	09/13/2005
First Named Inventor	Patrick Thomas O'Connor et al.
Examiner Name	Nga B. Nguyen
Art Unit	3628
Attorney Docket No.	P668D1

**METHOD OF PAYMENT** (check all that apply)☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☒ Deposit Account Deposit Account Number: 50-0534 Deposit Account Name: Mark A. Boys

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17☒ Credit any overpayments

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	0
Design	200	100	100	50	130	65	0
Plant	200	100	300	150	160	80	0
Reissue	300	150	500	250	600	300	0
Provisional	200	100	0	0	0	0	0

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
0 - 20 or HP =	0	25	0

HP = highest number of total claims paid for, if greater than 20

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
0 - 3 or HP =	0	100	0

HP = highest number of independent claims paid for, if greater than 3

Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
	0	0

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	0	0	125	0

(round up to a whole number) x

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other: Filing a brief in support of an appeal

Fees Paid (\$)

0

250.00

**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent)	35,074	Telephone	831-726-1457
Name (Print/Type)	Donald R. Boys	Date	09/13/2005		

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Date of Deposit: 09/13/2005

Ref: Case Docket No.: P668D1

First Named Inventor: Patrick Thomas O'Connor et al.

Serial Number: 09/814,010

Filing Date: 03/20/2001

Title of Case: An Internet Subscription System for Providing Appointment Management for Small Businesses

I hereby certify that the attached papers are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and addressed to the Commissioner for Patents, Alexandria, VA 22313-1450.

1. Appeal Brief.
2. Fee transmittal.
3. Duplicate fee transmittal.
4. Check for fees in the amount of \$250.00.
5. Certificate of express mailing.
6. Postcard listing contents.

Sheri L. Beasley

(Typed or printed name of person mailing paper or fee)

*Sheri L. Beasley*  
(Signature of person mailing papers or fee)